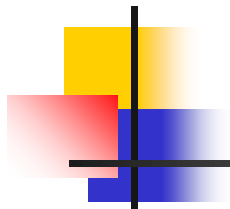


CZARA

Oregon Coastal Zone Act Reauthorization Amendments



DEQ Western Region Staff Meeting

March 11, 2015





WHAT WE WILL DISCUSS

- Background on CZARA & Oregon's Coastal Nonpoint Program
- CZARA Issues Needing to be Address
- Final Decision
- The Path Forward

Coastal Zone Act Reauthorization Amendments (CZARA)



- Enacted Nov. 5, 1990; Jointly administered by EPA & NOAA; EPA published (g) guidance in Jan. 1993
- CZMA Section 6217, which requires states participating in NOAA's CZMP to develop coastal nonpoint pollution control programs (CNPCPs)
- 34 states and territories currently participate in the National CZM Program
- 22 state programs have been approved; 11 have interim decisions

Status of Full Approvals as of Sept. 2013





CZARA's Purpose & Mandate

- States must “prepare and submit” to NOAA/EPA Coastal Non-point Pollution Control Program (CNPCP) that “shall be closely coordinated with State & local WQ plans & programs developed pursuant to sections 208, 303, 319, & 320” of CWA.
- 56 Management Measures across these categories:
Agriculture, Urban, Forestry, Marinas, Hydro modification, Wetlands – Oregon had @ 40 conditions to meet under these Management Measures – most have received interim approval
- *Each state shall also contain... additional management measures... necessary to achieve and maintain applicable water quality standards... and protect designated uses.*



CZARA's "Penalty Provision"



- Statute calls for EPA Administrator to withhold section 319 funds for any coastal state that "has failed to submit an approvable program"
 - ...For FY 1999 and each fiscal year thereafter, 30 percent of the amount awarded for FY 1998 or other preceding fiscal year.
 - The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.
- Similar clause for withholding NOAA's 306 funds



Pathways to Meeting CZARA Management Measures

- Regulatory Program
- Voluntary Program
 - Description of voluntary program – include methods for tracking and evaluating
 - A legal opinion from attorney general that authorities exist as backup
 - Description of process that links implementing agency with enforcement agency and a commitment to use authority



CZARA Timeline in Oregon

- 1995 – Oregon submitted its Coastal Non-point Source Control Program to NOAA/EPA
- 1998 – NOAA/EPA issued conditional approval findings; identified gaps
- Through 2008 NOAA/EPA and State continued to work to address the remaining conditions
- 2009 – Northwest Environmental Advocates files suit



Oregon Lawsuit Overview

- NWEA sued NOAA and EPA for failing to fully approve (without conditions) or disapprove OR's CNPCP. The parties reached a settlement agreement in September 2010.
- NOAA/EPA based settlement agreement and timeline on the State's commitment to address the remaining conditions via the Mid-Coast Implementation Ready TMDL
- Agreement established timeline with milestones to approve or disapprove OR's CNPCP by 2014



Oregon SA: Critical Deadlines

- By Dec. 31, 2012, NOAA-EPA provide ODEQ an initial assessment of the viability of its TMDL strategy for achieving WQS and addressing OR's remaining forestry conditions.
- By Nov. 15, 2013 NOAA-EPA must publish a decision for public notice & comment on our intent to approve or disapprove OR's CNPCP. Date extended to Dec. 20, 2013.
- EPA and NOAA to issue a final decision on May 15, 2014. Because of the extent of comments, date was extended to January 30, 2015. If OR's program is disapproved, SA calls for immediate implementation of CZARA's penalty provision
 - 30% funding cuts every year until full approval (or until state opts to drop out of CZMP ...NOAA's greatest concern).
- EPA-NOAA hope issuing the Nov-Dec. 2013 intent to disapprove notice creates an opportunity for OR to meet the unmet conditions in its CNPCP.
- A final disapproval decision is unprecedented. OR could close the gaps for full approval at a later date and end the penalties.



Oregon's Unmet Conditions

- New Development — “reduce average annual sediment loads”—post-construction
- On-site Sewage Disposal Systems — “Inspect OSDS at a frequency adequate to ascertain whether OSDS are failing”
- Additional MMs for Forestry
 - Increase protections for medium, small & non-fish-bearing “Type N” streams
 - Increase protections for landslide prone areas
 - Address impacts from forestry roads, esp. legacy roads
 - Ensure adequate stream buffers for application of certain chemicals



Agriculture Concerns

- NOAA/EPA have received comments regarding OR's programs for meeting the Ag MMs. Comments include:
 - Enforcement is limited and largely complaint driven
 - AWQMA plan rules don't require site specific mgmt. practices
 - AWQMA planning should focus on both restoration of impaired areas and protection of water quality and aquatic habitat
 - No clear, formalized process to track implementation and effectiveness
 - AWQMA plans do not address legacy issues
- NMFS recent Coho listings and draft recovery plans identified that insufficient riparian buffers around agricultural activities contribute to salmon decline



NOAA/EPA's Proposed Decision to Disapprove OR's CNPCP

- Issued on December 20, 2013
- Identified OSDS, New Development, four forestry issues as needing additional management measures
- Started 90 day public comment period
- Requested comments on the need for additional Ag MM



Addressing Public Comments

- Received 85 comments letters, over 800 documents
- Received extensive input from the State, Industry, Environmental Organizations and Individuals
- NOAA/EPA established technical and management teams for the review



Actions following Notice of Intent to Disapprove

- NOAA/EPA considered comments received including additional information from the State
- Developed a “Response to Comments” document
- Developed a “Decision Document”
- NOAA/EPA intend to make a final decision regarding the disapproval of OR program by 5/15/14 – delayed until January 30, 2015



State's (DEQ) Approach for Addressing the Remaining Issues

- On-site Sewage Disposal Systems
 - Partner with Oregon Realtors Association to develop voluntary inspection program
 - Revising Sellers Disclosure Statement
 - Standardizing inspection report form
 - Outreach and education
 - Tracking and evaluation
 - Annual inspection reports by certified inspectors
 - Survey of homebuyers



State's (DEQ) Approach for Addressing the Remaining Issues

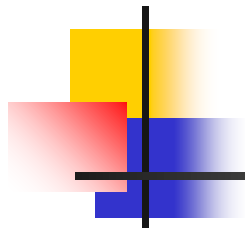
- New Development
 - Urban guidance for managing post-construction runoff
 - Outreach and education
 - Tracking
 - Regulatory approach as a fall-back
 - Options: MS4 permits; post construction general permit; adopt rules to implement federal rule if established



State's (ODF) Approach for Addressing Remaining Issues

- Forestry

- Based on recent studies, Board of Forestry considering options for increased protection of small and medium fish bearing streams
- Voluntary measures for landslides and roads
- Apply FIFRA as appropriate



NOAA/EPA's Final Decision

- Disapproved OR's CNPCP on January 30, 2015 based on lack of forestry management measures
 - Lack of adequate riparian protections for medium, small and non-fish bearing streams
 - Lack of adequate management measures for landslide to protect water quality
 - Lack of adequate management measures for roads especially legacy roads
 - Lack of protections on Type N streams when herbicides are aerially applied



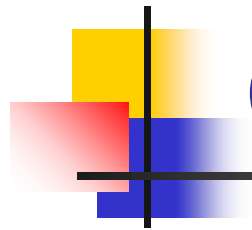
NOAA/EPA Issued Interim Approval For

- OSDS
- New Development



CZARA – Path to Full Approval

- Work with State Agencies to address remaining forestry issues.
- Continue to assess potential Ag issues and work with ODA and others to address those issues
- Review all previous interim approvals. Implement public review process



CZARA – Remaining Questions

- Timeframe for completing this work
- Date when penalties are applied